

FOODSTUFFS NORTH ISLAND LIMITED
TERMS AND CONDITIONS FOR THE SUPPLY OF
GOODS AND SERVICES

Last updated: August 2019

1. DEFINITIONS

1.1. In these terms and conditions, unless the context requires otherwise:

Affiliate of a party, means any person (including any holding company or subsidiary of the party or any member of its group of companies) from time to time that:

- (a) controls the party;
- (b) is controlled by the party; or
- (c) is controlled by a person that also controls the other party,
where "control" includes direct or indirect control, and in the case of Foodstuffs includes:
 - (d) the other Foodstuffs Co-operative; and
 - (e) any company that is controlled jointly by the Foodstuffs Co-operatives;
 - (f) any company who operates a retail or wholesale grocery food warehouse, supermarket or grocery store in accordance with a franchise agreement with Foodstuffs;

Applicable Laws means all laws, regulations and industry standards applicable to the supply of Goods and/or Services;

Approved Supplier Compliance Documentation means the most recent version of Foodstuffs' approved supplier compliance documentation as published on Foodstuffs' websites or otherwise notified to the Supplier from time to time;

Deliverables means all documents, products and materials developed by or on behalf of the Supplier for Foodstuffs or its Affiliates as part of the Services in any form or media, including drawings, plans, diagrams, designs, pictures, computer programs, data, specifications and reports;

Foodstuffs means Foodstuffs North Island Limited (company no. 41782);

Foodstuffs Co-operatives means Foodstuffs and Foodstuffs South Island Limited (company number 391297);

Goods means:

- (a) the goods described in a Purchase Agreement that are to be supplied by the Supplier and includes samples, packaging and labelling and any accessories, documentation or publication accompanying the Goods; and
- (b) the Deliverables provided as part of a Service;

GST means goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985 (as amended or replaced);

Intellectual Property Rights means all intellectual property rights (present and future) and includes any patents, registered designs, trade marks, copyright, know-how, trade secrets, and product or business concepts, in each case whether registered or unregistered and any analogous right worldwide;

PPSA means the New Zealand Personal Property Securities Act 1999 (as amended or replaced);

Purchase Agreement has the meaning given in clause 3.1;

Purchase Order means an order submitted by Foodstuffs or a Foodstuffs Affiliate to the Supplier requesting that the Supplier supply Goods and/or Services in accordance with these Terms and which contains any other terms agreed between the parties relating to discounts, delivery terms, rebates, delivery timeframes, service levels or similar matters;

Policies means the most recent version of Foodstuffs' policies, practices, requirements and standards applicable to the supply of Goods and/or Services as published on Foodstuffs' websites or otherwise notified to the Supplier from time to time;

Services means the services, including the provision of any Deliverables, to be provided to Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) by the Supplier, as set out in the relevant Purchase Agreement;

Specifications means any specifications or requirements for the Goods and/or Services that are set out in the relevant Purchase Agreement or otherwise agreed between the parties;

Supplier means the Supplier that is named in the Purchase Agreement;

Supplier Portal means the Foodstuffs National eXchange accessible via <https://www.foodstuffs-exchange.co.nz/> (or such other URL designated by Foodstuffs);

Terms mean these terms and conditions for the supply of Goods and Services;

Vendor Invoicing Handbook means the most recent version of Foodstuffs' vendor invoicing handbook for suppliers, as published on Foodstuffs' websites or otherwise notified to the Supplier from time to time.

2. APPLICATION

2.1. These Terms apply to any Purchase Order Foodstuffs or a Foodstuffs Affiliate places with the Supplier, unless otherwise agreed in writing. Subject to clause 2.2, to the extent that there are any inconsistencies between these Terms and a Purchase Order, the Purchase Order will take precedence. Foodstuffs' or the relevant Foodstuffs Affiliate's (as applicable) acceptance of, or payment for, Goods and/or Services will not constitute acknowledgement or acceptance of the Supplier's conditions of sale.

2.2. Anything contained in a Purchase Order will not detract from the rights or remedies that Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) would otherwise have under or in connection with these Terms, except to the extent that the Purchase Order clearly identifies the specific clauses in these Terms that are to be modified or overridden.

3. AGREEMENT

3.1. Foodstuffs or a Foodstuffs Affiliate will submit to the Supplier a Purchase Order via the Supplier Portal or by any other means approved by Foodstuffs. The Purchase Order will constitute an offer by Foodstuffs to purchase the Goods and/or Services detailed in the Purchase Order. The Purchase Order will be deemed to be accepted by the Supplier on the earlier of:

- (a) the Supplier accepting the Purchase Order via the Supplier Portal; or
- (b) the Supplier doing any act consistent with fulfilling the Purchase Order.

Once accepted, the Purchase Order will constitute a separate agreement between Foodstuffs and the Supplier incorporating these Terms (the **Purchase Agreement**). The Purchase Agreement will supersede all previous communications and negotiations between the parties relating to the subject matter of the Purchase Agreement, except where the parties have negotiated and agreed a separate agreement in which case the terms and conditions of the Purchase Agreement will apply to the extent they are not inconsistent with that other agreement.

4. FOODSTUFFS AFFILIATES

4.1. Each Purchase Agreement is entered into on the basis that the Supplier acknowledges that the rights granted, and the benefits flowing, under this Agreement are intended to be for the benefit of Foodstuffs and where applicable, Foodstuffs' Affiliates and that each Purchase

Agreement creates obligations on the part of the Supplier that are enforceable at the suit of Foodstuffs and its Affiliates pursuant to Part 2, Subpart 1 of the Contract and Commercial Law Act 2017. Where any loss is suffered by an Affiliate under a Purchase Agreement, that loss will be treated as a loss to Foodstuffs (**Affiliate Loss**). Foodstuffs will procure that none of its Affiliates will bring any claim against the Supplier under a Purchase Agreement provided that where any Affiliate Loss is suffered by an Affiliate, Foodstuffs may make a claim against the Supplier relating to the Affiliate Loss on the relevant Affiliate's behalf. The Supplier agrees that it will not bring any claim against an Affiliate under a Purchase Agreement and the Supplier may only bring any such claim against Foodstuffs. Except as set out in this clause, it is agreed that each Purchase Agreement is not intended to, and does not, give to any person who is not a party to the relevant Purchase Agreement any rights to enforce any provisions contained in the relevant Purchase Agreement except for any person to whom the benefit of the relevant Purchase Agreement is assigned or transferred in accordance with clause 22.5.

5. NON-EXCLUSIVE

5.1. Each Purchase Agreement is not an exclusive supply arrangement. Except where a Purchase Agreement expressly provides otherwise, Foodstuffs makes no purchase commitment, whether in terms of dollar value, volume of Goods and/or Services, or otherwise.

6. PRICE AND PAYMENT

6.1. Unless otherwise agreed in writing between the parties:

- (a) the price of the Goods and/or Services will be as set out in the Purchase Agreement;
- (b) the price will be in New Zealand dollars and will include all costs incurred by the Supplier prior to delivery, and including any other applicable taxes, duties and all delivery and packaging costs but excluding GST; and
- (c) payment for the Goods and/or Services will be made to the Supplier in accordance with the agreed vendor payment terms as specified in the Vendor Invoicing Handbook.

7. INVOICING

7.1. Invoices for the Goods and/or Services supplied by the Supplier must be issued in accordance with the Vendor Invoicing Handbook. Without limiting the previous sentence, where a settlement discount applies, the invoice must include the price and the applicable settlement discount as specified in the Vendor Invoicing Handbook.

7.2. If at any time Foodstuffs or a Foodstuffs Affiliate disputes the amount of an invoice (**Disputed Amount**) Foodstuffs does not have to pay the Disputed Amount until the dispute is resolved but Foodstuffs must pay any undisputed amounts in accordance with the relevant Purchase Agreement. The parties shall enter good faith negotiations to resolve any Disputed Amount. The Supplier may not, wholly or partially, suspend, cancel or withdraw the supply of the Goods and/or Services or terminate any Purchase Agreement if an invoice is disputed.

7.3. Notwithstanding anything to the contrary in the Vendor Invoicing Handbook:

- (a) invoices for all Goods and/or Services must be received by Foodstuffs immediately following delivery of the Goods/Services or otherwise in accordance with an agreed billing schedule specified in the relevant Purchase Agreement (**Invoice Due Date**); and
- (b) Foodstuffs reserves the right to reject all invoices received greater than 3 months after the Invoice Due Date.

8. DELIVERY

8.1. The Supplier must deliver the Goods and/or Services in accordance with the Purchase Agreement, including delivering the Goods and/or Services:

- (a) to the location, and on the date, specified in the Purchase Agreement or as otherwise requested by Foodstuffs or, where applicable, the relevant Foodstuffs Affiliate;
- (b) during the normal operating hours of the delivery location; and
- (c) in accordance with any Specifications, timeframes and service levels set out in a Purchase Agreement.

8.2. The Supplier must immediately advise Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) of:

- (a) any delays or anticipated delays in relation to the delivery of Goods and/or Services;
- (b) any problem encountered in the manufacture, packaging, storage or transport of the Goods that may have an adverse effect on the quality and/or safety of the Goods; and
- (c) any Services that the Supplier knows (or that the Supplier subsequently becomes aware of) does not comply with the Specifications, timeframes, service levels or any other requirements.

8.3. Any Goods delivered in error or in excess of the quantity stated on the Purchase Agreement may be returned to the Supplier by Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) at the Supplier's expense.

8.4. The Supplier must comply with all requirements of the New Zealand Land Transport Safety Authority with regard to the transport and delivery of Goods.

8.5. All deliveries of Goods must comply with the delivery requirements set out in Policies or as otherwise notified by Foodstuffs or the relevant Foodstuffs Affiliate from time to time.

8.6. Where Goods are being delivered to Foodstuffs' Central Distribution Centre, the Supplier must comply with the pallet requirements set out in Policies or as otherwise notified by Foodstuffs from time to time.

8.7. The Supplier acknowledges that Foodstuffs is a signatory to the New Zealand Packaging Accord 2004 and agrees to comply with such terms and conditions as Foodstuffs reasonably imposes on the Supplier from time to time in order to ensure Foodstuffs' compliance with the New Zealand Packaging Accord 2004.

9. ACCEPTANCE

9.1. Following delivery of the Goods and/or Services in accordance with clause 8 above, Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) may inspect the Goods and/or Services and notify the Supplier of any unsatisfactory, defective or non-complying Goods and/or Services (**Non-complying Item**).

9.2. Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) is entitled to:

- (a) return Non-complying Items to the Supplier at the Supplier's expense and risk;
- (b) pay only for the Goods delivered, if the quantity delivered is less than the quantity set out in the relevant Purchase Agreement; and/or;
- (c) request that any Non-complying Items that are Services be re-performed so that they comply with the Specifications, timeframes, service levels or any other requirements.

9.3. Where the Supplier delivers the Goods and/or Services directly to a Foodstuffs Affiliate, the Supplier will co-operate with the Foodstuffs Affiliate, and will comply with the applicable requirements of the Vendor Invoicing Handbook, in relation to all returns and credits.

10. TITLE AND RISK

10.1. Title in, and subject to clause 11.1, risk associated with, any Goods supplied by the Supplier under a Purchase

Agreement shall pass to Foodstuffs on delivery of the Goods in accordance with clause 8 above, regardless of whether payment for the Goods has been received by the Supplier.

10.2. The Goods must be free of encumbrances and all other adverse interests (including any Security Interests, as that term is defined in the PPSA).

11. OVERSEAS GOODS

11.1. In relation to Goods delivered free on board (FOB) or free carrier (FCA) to, or collected ex works (EXW) from, a location outside New Zealand, risk associated the Goods shall pass in accordance with the respective Incoterms and the Supplier will provide at its cost:

- (a) if requested by Foodstuffs, advance production samples of the Goods to be forwarded to Foodstuffs prior to shipment of the Goods;
- (b) all documentation required to transport the Goods to New Zealand, in the form reasonably required by Foodstuffs and the relevant New Zealand authorities such as New Zealand Customs Service, including:
 - (i) inspection and test reports and other documents prior to shipment; and
 - (ii) shipping documents (including commercial invoices, packing lists, declarations, certificates of origin and packing notes),within 2 days of shipment.

11.2. Where the Supplier is responsible for the importation of the Goods into New Zealand, the Supplier must obtain all necessary licences and permissions required to export the Goods from the relevant country and to import the Goods into New Zealand.

12. VARIATION OR CANCELLATION

12.1. Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) may at any time prior to delivery of the Goods and/or Services issue written instructions to the Supplier authorising or requiring additions, deletions or alterations to the Purchase Agreement.

13. WARRANTY

13.1. The Supplier warrants and represents, in respect of each Purchase Agreement, that the Goods and/or Services:

- (a) are free from all encumbrances and all other adverse interests (other than encumbrances that will be released at or before the time at which title in the Goods passes to Foodstuffs), and that Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) will enjoy quiet possession of the Goods;
- (b) are, and will remain, free of any Security Interests (as that term is defined in the PPSA);
- (c) are of merchantable quality and fit for any purpose which is made known to the Supplier by Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable), or for which the Goods are commonly supplied;
- (d) will be free from defects in design, materials and workmanship;
- (e) if supplied by reference to a sample or descriptions, will correspond with the sample and/or description;
- (f) will, where applicable, have a shelf-life remaining at the time of delivery to Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) that meets Foodstuffs' Policies;
- (g) comply with all Specifications and requirements contained in the Purchase Agreement;
- (h) do not infringe the Intellectual Property Rights of any person; and
- (i) comply with all Applicable Laws, rules, statutory and other legal requirements (including, without limit, the Australia New Zealand Food Standards Code and all applicable product safety and packaging requirements).

13.2. The Supplier further warrants and represents that it:

- (a) has authority to enter into each Purchase Agreement;
- (b) will comply with all applicable Policies; and
- (c) holds and will comply with all necessary licences, permits, and other approvals required for manufacture, packing, supply and storage of the Goods and/or Services.

14. REMEDIES

14.1. Without prejudice to any other remedy available to Foodstuffs or the relevant Foodstuffs Affiliate (as applicable), if:

- (a) the Supplier does not deliver the Goods and/or Services in accordance with clause 8;
- (b) the Supplier breaches any of the warranties in clause 13; or
- (c) Foodstuffs or the relevant Foodstuffs Affiliate (as applicable) discovers that the Goods and/or Services do not meet the Specifications and requirements set out in the relevant Purchase Agreement, whether after delivery of, or payment for, the Goods and/or Services, and notwithstanding Foodstuffs' or the relevant Foodstuffs Affiliate's (as applicable) acceptance of the Goods and/or Services, then, Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) will have the right to any one or more of the following remedies:
 - (d) terminate the relevant Purchase Agreement and any other Purchase Agreement entered into between the Supplier and Foodstuffs by giving written notice to the Supplier;
 - (e) reject the Goods and/or Services (in whole or part) and return them to the Supplier at the Supplier's risk and expense;
 - (f) require the refund of any payment made by Foodstuffs to the Supplier in relation to the rejected, undelivered, non-complying and/or returned Goods and/or Services;
 - (g) require the Supplier to pay for the cost of the repair or replacement of the Goods and/or Services;
 - (h) refuse to accept any subsequent delivery of the Goods and/or Services;
 - (i) recover from the Supplier any costs Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) incurs in obtaining substitute Goods and/or Services from third party; and
 - (j) claim damages for any other costs, loss or expenses Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) incurs which are in any way attributable to the Supplier's failure to comply with 14.1(a), (b) or (c).

15. INDEMNITY

15.1. The Supplier indemnifies Foodstuffs and its Affiliates against all losses, liabilities, damages, costs, expenses and any other charges incurred or paid by Foodstuffs arising out of or in connection with:

- (a) a breach by the Supplier of any Purchase Agreement or any Applicable Laws;
- (b) any negligence by or on behalf of the Supplier in connection with its delivery of the Goods and/or Services under these Terms or any Purchase Agreement;
- (c) any recall or withdrawal of Goods (whether initiated by the Supplier, Foodstuffs, or any Affiliate, or ordered by a relevant authority) due to a potential risk to the public in relation to the Goods, non-compliance with any Applicable Laws, or any defects or faults in the Goods;
- (d) any claim or complaint brought against Foodstuffs or a Foodstuffs Affiliate by a consumer of the Goods under the Consumer Guarantees Act 1993;
- (e) any death or personal injury, or any loss or damage to Foodstuffs' or its Affiliates' or any third party's

real or personal property, caused by the Supplier's act or omission;

- (f) any use of the Goods or Services by a customer of Foodstuffs or its Affiliates; or
- (g) any threatened or actual claim of infringement of a third party's Intellectual Property Rights.

16. COMPLAINTS

16.1. Foodstuffs and/or the relevant Foodstuffs Affiliate may (at its election):

- (a) decide to deal with and respond to any complaint regarding the Goods or Services itself; and/or
- (b) refer any complaint regarding the Goods or Services directly to the Supplier.

16.2 If Foodstuffs and/or the relevant Foodstuffs Affiliate refers a complaint regarding the Goods or Services directly to the Supplier under clause 16.1, then the Supplier will:

- (a) provide all reasonable co-operation to Foodstuffs and/or the relevant Foodstuffs Affiliate to assist Foodstuffs and/or the relevant Foodstuffs Affiliate with resolving the complaint; and
- (b) comply with all reasonable directions provided by Foodstuffs and/or the relevant Foodstuffs Affiliate in relation to the complaint.

17. INSURANCE

17.1. The Supplier must obtain and maintain public and product liability insurance cover of not less than \$10,000,000 (or such other amount agreed in writing by Foodstuffs) for any one claim with a reputable insurer. The Supplier will, upon request from Foodstuffs, promptly notify Foodstuffs in writing with reasonable evidence showing that the Supplier has in place the insurances required by this clause 17.1. If the Supplier fails to obtain such insurances or provide such notice, Foodstuffs may obtain the required insurances on the Supplier's behalf, and Foodstuffs may either deduct the associated premiums from the amounts payable to the Supplier under any Purchase Agreements or require that the Supplier promptly reimburses Foodstuffs for those premiums.

18. CONFIDENTIAL INFORMATION

18.1. Each party agrees to keep confidential and secure and will not misuse, any information which is proprietary, commercially sensitive or confidential to the other party (including, without limit, the terms of any Purchase Agreement) and to take all appropriate steps which are necessary to ensure that such information is not disclosed without the prior written consent of the other party. This clause will not apply to information that is already in the public domain, or information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange or information that is required to be disclosed or used to give effect to a Purchase Agreement.

19. INTELLECTUAL PROPERTY

19.1. Subject to clause 19.3, all Intellectual Property Rights owned by either party (present and future) will remain the property of that party. The Supplier will not use Foodstuffs' Intellectual Property Rights without Foodstuffs' prior written approval.

19.2. The Supplier grants to Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) a perpetual, non-exclusive, royalty-free licence to download, use, copy and adapt the Supplier's Intellectual Property Rights (including any product images, trade marks or promotional material) in connection with the use, marketing and sale of the Goods by Foodstuffs Affiliates. Notwithstanding the forgoing, Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) will be entitled to take its own photographs of the Goods to be used by Foodstuffs and/or the relevant Foodstuffs

Affiliate (as applicable) to advertise or promote the Goods.

19.3. All Intellectual Property Rights in any Goods specifically developed for Foodstuffs or any Foodstuffs Affiliate as part of the provision of any Goods or Services will be owned by Foodstuffs or its nominee on creation.

20. RECORD KEEPING AND REPORTING

20.1. The Supplier must keep and produce on request by Foodstuffs, records in relation to all Purchase Agreements (including any documents necessary for tracing purposes) for the greater of (a) any period required by Applicable Laws; and (b) 7 years.

20.2. The Supplier must prepare and deliver to Foodstuffs statements of accounts in the manner and frequency specified in the Vendor Invoicing Handbook.

20.3. Upon request from Foodstuffs, the Supplier will provide reports and performance updates in relation to the Goods and/or Services.

21. TERMINATION

21.1. Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) may terminate any Purchase Agreement immediately after giving the Supplier notice in writing if:

- (a) the Supplier is in breach of the Purchase Agreement;
- (b) the Supplier is in breach of any other Purchase Agreement or other agreement it has with Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable);
- (c) the Supplier becomes bankrupt, goes or is put into liquidation, has a receiver or statutory manager appointed over any of its assets, becomes insolvent, ceases to carry on its business, or makes any composition or arrangement with its creditors;
- (d) the Supplier sells, or agrees to sell, its business;
- (e) the Supplier is a body corporate and undergoes a change of control that Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) reasonably believes could materially affect Foodstuffs' and/or the relevant Foodstuffs Affiliate's interests. For the purposes of this clause, "control" means the power to exercise more than 50% of the voting interests of the Supplier, or ownership of more than 50% of the beneficial or legal interests in income or capital of the Supplier; or
- (f) anything substantially similar to the events described in paragraphs (a) to (e) above in the jurisdiction of incorporation or registration of the Supplier

21.2. Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) may terminate part or all of a Purchase Agreement relating to Goods and/or Services that have not yet been delivered by giving written notice to the Supplier at any time.

21.3. Except where Foodstuffs and/or the relevant Foodstuffs Affiliate (as applicable) terminates a Purchase Agreement under clause 21.1, Foodstuffs will pay the Supplier for:

- (a) all Goods and Services actually supplied prior to termination; and
- (b) all Goods that have been manufactured prior to termination and which the Supplier, using reasonable endeavours, is unable to sell to another customer.

22. GENERAL

22.1. **Policies:** The Supplier must comply with the Approved Supplier Compliance Documentation and all applicable Policies. The Supplier will advise Foodstuffs immediately when it becomes aware that it has breached or is likely to have breached the Approved Supplier Compliance Documentation or any Policies.

22.2. **Audit:** On receipt of 5 working days' prior written notice from Foodstuffs, the Supplier will promptly provide

- Foodstuffs with any access, information or assistance Foodstuffs reasonably requires to audit the Supplier's compliance with its obligations under any Purchase Agreement, subject to Foodstuffs agreeing to comply with the Supplier's reasonable confidentiality and security requirements.
- 22.3. **Notices:** Any notice to be given under, or in connection with any Purchase Agreement shall be given in writing to the other party's physical or contact email address and delivered by hand, prepaid post, or by email to the address for the other party's contact person as agreed from time to time.
- 22.4. **Disputes:** If a dispute or disagreement arises between the parties in relation to a Purchase Agreement (**Dispute**), the parties' respective contact persons shall, within 14 days of written notice by either party to the other of the Dispute (**Dispute Notice**), negotiate in good faith with a view to resolving the Dispute. If the Dispute is unable to be resolved within 30 days of the Dispute Notice, the parties shall refer the Dispute to the Chief Executive Officer (or equivalent) of each party.
- 22.5. **Assignment:** The Supplier must not directly or indirectly assign, subcontract, transfer, or otherwise dispose of any of its rights or obligations under any Purchase Agreement without the prior written consent of Foodstuffs. Foodstuffs may assign, subcontract, transfer, or otherwise dispose of any of its rights or obligations under any Purchase Agreement without the prior consent of the Supplier. The Supplier will execute all documents (and take all other steps) necessary to give to the same.
- 22.6. **Relationship of the parties:** Nothing in any Purchase Agreement will be deemed to constitute either party as the partner or joint venturer of the other.
- 22.7. **Further acts:** Each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to any Purchase Agreement, its provisions and any transactions contemplated by it.
- 22.8. **Governing Law:** Each Purchase Agreement shall be governed by and interpreted in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 22.9. **Survival:** Termination of a Purchase Agreement will not affect the rights and obligations of the parties under that Purchase Agreement immediately prior to termination, or any provisions of that Purchase Agreement which are intended to, or should reasonably, survive termination.
- 22.10. **Set off:** Foodstuffs may set off any amounts it owes the Supplier under any Purchase Agreement against any amounts owed to Foodstuffs or any of its Affiliates by the Supplier under any Purchase Agreement or otherwise, including any credits.
- 22.11. **Invalidity:** If any one or more of the provisions of a Purchase Agreement is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not in any way be affected, prejudiced or impaired.
- 22.12. **Waiver:** failure to exercise or delay in exercising any right under any Purchase Agreement will not operate as a waiver of that right. A party will not be deemed to have waived any right under any Purchase Agreement unless the waiver is in writing and signed by an authorised representative of that party. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in the Purchase Agreement.
- 22.13. **Consumer Guarantees Act:** The parties agree that the Goods and Services are supplied by the Supplier to Foodstuffs and/or to a Foodstuffs Affiliate for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Foodstuffs.
- 22.14. **Changes:** These Terms may be varied by Foodstuffs at any time. Unless stated otherwise, amendments to these Terms will be effective upon notice via the Supplier Portal or other electronic means, or by posting the changes on Foodstuffs' website.
- 22.15. **Counterparts:** Each Purchase Agreement may be executed, affirmed or approved in counterparts (including email copies), all of which when signed and taken together constitute a single agreement between the parties.